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9 Tech-4-Kids, Inc.

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11 **UNITED STATES DISTRICT COURT**
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13 **CENTRAL DISTRICT OF CALIFORNIA**
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15 **WESTERN DIVISION**

16 TECH-4-KIDS, INC.,

17 vs.
18 Plaintiff,

19 SPORT DIMENSION, INC.,

20 Defendant.

21 SPORT DIMENSION, INC.,

22 vs.
23 Counterclaimant,

24 TECH-4-KIDS, INC.,

25 Counterdefendant.

26 CASE NO. 2:12-CV-06769-PA-AJW

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28 **TECH-4-KIDS' STATEMENT OF
NON-OPPOSITION TO
DEFENDANT'S MOTION FOR
LEAVE TO AMEND ANSWER TO
FIRST AMENDED COMPLAINT**

Date: February 11, 2013

Time: 1:30 p.m.

Courtroom: 15

Judge: Honorable Percy Anderson

Initial Complaint Filed: Dec. 6, 2011

First Amended Complaint Filed: Aug. 17, 2012

Last Day to Hear Motions to Amend:
February 18, 2013

Discovery Cut-Off: May 27, 2013

Motion Cut-Off: June 3, 2013

Trial: August 6, 2013

Pursuant to Central District of California Local Rule 7-9, Plaintiff Tech-4-Kids, Inc. (“Plaintiff” or “Tech-4-Kids”) hereby files this Statement of Non-Opposition to Defendant Sport Dimension Inc.’s Motion for Leave to File Amended Answer to First Amended Complaint (“Motion”) (Dkt. No. 54). Tech-4-Kids does so in order to avoid burdening the Court and in an effort to preserve judicial resources.

In declining to oppose the Motion, Tech-4-Kids states the following:

During counsel’s December 5, 2012 discussion, counsel for Tech-4-Kids indicated that it would stipulate to Sport Dimension amending its answer but asked for Sport Dimension to give reciprocal consideration when Tech-4-Kids was prepared to file its Second Amended Complaint (“SAC”). Although declining to stipulate at that time, Sport Dimension’s counsel agreed that she would give good faith consideration to Tech-4-Kids’ draft amended complaint, when it was ready.

Separately, Tech-4-Kids requested that Sport dimension complete its document production, initially due on November 12, prior to the deadline for the parties to move for leave to amend so that Tech-4-Kids could integrate any new facts learned through discovery into its Second Amended Complaint (“SAC”). (Tech-4-Kids has filed its Motion for Leave to Amend to be heard on February 11, with the deadline for amending pleadings scheduled for February 18, 2013).

Instead of doing so, Sport Dimension engaged in substantial discovery abuse including providing frivolous interrogatory responses. In addition, Tech-4-Kids has recently learned that, to date, Sport Dimension has failed to produce the majority of its responsive documents, originally due more than three months ago. Sport Dimension’s discovery misconduct is set forth in Tech-4-Kids’ pending motion to compel. However, the deadline to file a motion to amend has passed and Tech-4-Kids has been deprived of the opportunity to add any new facts to its SAC that it could have learned from Sport Dimension’s long overdue production.

To compound matters, Sport Dimension unreasonably refused to stipulate to Tech-4-Kids’ filing its SAC the amendments to which are based, in whole or part, on

1 documents recently produced by Sport Dimension. If Sport Dimension had stipulated, it
2 would have avoided the need to seek leave to amend its answer because it could have
3 included any of its new affirmative defenses in its answer to Tech-4-Kids' SAC. Thus,
4 by refusing to stipulate to Tech-4-Kids' SAC, Sport Dimension has doubly wasted
5 resources because it forced both parties to seek leave to amend as opposed to neither.

6 Nevertheless, despite Sport Dimension's discovery misconduct, which hampered
7 Tech-4-Kids ability to file its SAC, and Sport Dimension's refusal to stipulate to Tech-4-
8 Kids' SAC, Tech-4-Kids does not oppose Sport Dimension's Motion for Leave to
9 Amend its Answer. Tech-4-Kids so declines to avoid burdening the Court and to permit
10 the parties to move on to discovery and a resolution of the present dispute on the merits.

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13 DATED: January 17, 2013

GREENBERG TRAURIG, LLP

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By: /s/ Michael S. Lawrence

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Attorneys for Plaintiff and Counter-Defendant
Tech-4-Kids, Inc.

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